

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
:
:
vs : 16-CR-152
:
:
JOSIAH FERREBEE :
:
:

BEFORE: THE HONORABLE JOSEPH F. SAPORITO
UNITED STATES MAGISTRATE JUDGE

PLACE: COURTROOM NO. 1

PROCEEDINGS: RULE 5

DATE: JUNE 3, 2016

APPEARANCES:

For the United States:

FRANCIS P. SEMPA, ESQ.
U.S. ATTORNEY'S OFFICE
235 N. WASHINGTON AVENUE
3RD FLOOR
SCRANTON, PA 18503

For the Defendant:

CHRISTOPHER J. OSBORNE, ESQ.
OSBORNE LAW, LLC
329 PENN AVENUE
SUITE 202C
SCRANTON, PA 18503

1 THE COURT: Good afternoon, everyone. We're here in
2 the matter of the United States versus Josiah Ferrebee. Is
3 that how you pronounce your name?

4 THE DEFENDANT: Josiah.

5 THE COURT: Ferrebbe; is that correct?

6 THE DEFENDANT: Yes.

7 THE COURT: Mr. Ferrebee, would you be kind enough to
8 stand and raise your right hand, please?

9 JOSIAH FERREBEE, called as a witness, being duly
10 sworn, testified as follows:

11 BY THE COURT:

12 Q. Please be seated. Thank you. Sir, you are here today
13 because you are charged with certain felonies by a complaint
14 supported by an affidavit. As a result of those criminal
15 charges filed against you, this is a hearing pursuant to rule
16 five of the federal rules of criminal procedure, and you will
17 be advised of certain rights. Do you understand that, sir?

18 A. Yes.

19 Q. Your first right is you have the right to remain silent.
20 You are not required to make a statement. However, anything
21 you say at this proceeding may be used against you in any
22 subsequent court proceeding. Do you understand that?

23 A. Yes.

24 Q. And would you state your name and your age, please, for
25 the record?

1 A. Josiah Ferrebee, age 19.

2 Q. I presume that you both speak and understand the English
3 language; is that correct?

4 A. Yes.

5 Q. Do you have a copy of the complaint?

6 A. Yes.

7 Q. All right. Did you see the supporting affidavit as well?

8 A. Yes.

9 Q. All right. Now, in this proceeding you'll be advised of
10 the charges against you as well as your constitutional rights
11 and your right to counsel. We will set further hearings in the
12 case and make a determination whether you will be released or
13 detained while the case is pending. Do you understand that,
14 sir?

15 A. Yes.

16 Q. Now, do you have any physical or mental conditions that
17 may impair your ability to participate in or otherwise this
18 Court proceeding?

19 A. I'm diabetic. That's everything.

20 Q. Does that interfere with your ability to understand the
21 nature of this proceeding?

22 A. No.

23 Q. All right. Have you taken any medication, drugs, alcohol
24 or other substance that may impair your ability to participate
25 in or otherwise understand this Court proceeding?

1 A. No.

2 Q. Now, you may consult with an attorney, to be represented
3 by an attorney at all stages of the proceedings both in and out
4 of court. Do you understand that?

5 A. Yes.

6 Q. Your attorney may be present during questioning by the
7 authorities. Do you understand that?

8 A. Yes.

9 Q. Now, are you able to afford an attorney?

10 A. There is one pending right now.

11 Q. Okay.

12 A. I am not sure what the status of it is.

13 Q. Is it your desire I appoint for you now while this matter
14 is pending?

15 A. Yes.

16 Q. I see you've completed a financial affidavit. Are the
17 statements that you made in the affidavit true and correct?

18 A. Yes.

19 Q. Based upon the information provided in the affidavit, I
20 will appoint Christopher J. Osborne to represent you for the
21 remainder of these proceedings. If at any time you do retain
22 private counsel, I would ask that you advise first Mr. Osborne
23 so that he can prepare the necessary paperwork to allow for his
24 withdrawal of your representation and that your new counsel
25 will then enter his or her appearance. Do you understand that,

1 sir?

2 A. Yes.

3 Q. All right. Now, the government has filed a complaint
4 charging you with certain crimes. I will ask Mr. Sempa from
5 the United States Attorney's Office to summarize those charges
6 as well as to state the maximum possible penalties for the
7 charges. Mr. Sempa?

8 MR. SEMPA: Yes, Your Honor. He's charged with a
9 violation of Title 18 United States Code Section 2251, which is
10 production of child pornography. That charge carries a
11 mandatory minimum sentence of 15 years in prison, a potential
12 maximum sentence of 30 years in prison, a fine of up to
13 \$250,000, at least five years, up to a life term of supervised
14 release that would follow any prison sentence and a \$100
15 special assessment.

16 He's also charged with a violation of Title 18 United
17 States Code Section 2422 B., which is using a means or facility
18 of interstate commerce to persuade or coerce a minor to engage
19 in sexual activity for which any person can be charged. That
20 charge carries a mandatory minimum sentence of 10 years in
21 prison, a potential maximum sentence of life in prison, a fine
22 of up to \$250,000, at least five years, up to a life term of
23 supervised release and a \$100 special assessment.

24 BY THE COURT:

25 Q. Mr. Ferrebee, do you understand the charges against you?

1 A. Yes.

2 Q. Do you understand the maximum possible penalties?

3 A. Yes.

4 Q. All right. Now, under certain circumstances you have the
5 right to a preliminary hearing, and the purpose of the
6 preliminary hearing is to determine whether probable cause
7 exists to believe that an offense has been committed and that
8 you may have committed it. If such a finding is made, you will
9 be required to appear for further court proceedings. Do you
10 understand that?

11 A. Yes.

12 Q. Now, the preliminary hearing may be waived, that is you
13 may give up your right to a preliminary hearing and before
14 doing so you may consult with counsel. Do you understand that?

15 A. Yes.

16 Q. If you waive the hearing, you will be required to appear
17 for further court proceedings. Do you understand had that?

18 A. Yes.

19 Q. Now, I advise you that the preliminary hearing will not
20 take place if an indictment is returned or an information is
21 filed before the date of the preliminary hearing. Do you
22 understand that?

23 A. Yes.

24 Q. You're advised the date of your preliminary hearing is set
25 for Wednesday, June 15th, 2016 at 10 a.m. here in this

1 courtroom in this courthouse. Do you understand that?

2 A. Yes.

3 Q. Now, you're also advised you may be eligible for pretrial
4 release. Is there an agreement regarding conditions for
5 release?

6 MR. SEMPA: There is not, Your Honor. The government
7 is moving for detention pending trial in this matter. And I
8 have spoken briefly with Mr. Osborne, and it's my understanding
9 that at this point he is going to be -- the defendant will be
10 waiving a detention hearing, reserving his right to raise the
11 issue should his circumstances change.

12 MR. OSBORNE: Yes, Your Honor. I have spoken to
13 pretrial services. There's no conditions that exist now.
14 There's no land line at the house. And they haven't had the
15 opportunity to review what the living situation would be. So
16 at this point we are going to waive -- hopefully have a land
17 line installed in his house, and I will be able to move for
18 release at a future date.

19 BY THE COURT:

20 Q. Okay. Under the Bail Reform Act of 1984 you have the
21 right to have a detention hearing as early as today if you'd
22 like. However, counsel for the government and your counsel
23 have indicated to me it's your desire today to waive without
24 prejudice your right to have a detention hearing. So that
25 means that you may in the future request that we reconvene for

1 a detention hearing and the issues will be reserved for that
2 point in time. Do you understand that?

3 A. Yes.

4 Q. If you elect to have a detention hearing, the government
5 could present evidence in the form of a proffer which means
6 they can summarize testimony as to what they feel would be
7 grounds to detain you. Or on the other hand, they can present
8 live testimony, and you -- at which time you would have the
9 right to cross-examine that through -- those witnesses through
10 your counsel. Do you understand that?

11 A. Yes.

12 Q. And in addition to that, you also would have the right to
13 testify on your own behalf and to present testimony through
14 live witnesses or by way of proffer as well, which is a
15 summarization of what witnesses would testify to. Do you
16 understand that?

17 A. Yes.

18 Q. All right. Knowing that, is it your desire then to you're
19 going to waive or give up your right to a detention hearing
20 today?

21 A. Yes.

22 Q. All right. Very well. Under those circumstances then you
23 will be remanded to the custody of the United States marshal,
24 and then we will perhaps see you at some point in the future as
25 this case progresses. Do you understand that?

1 A. Yes.

2 Q. All right.

3 THE COURT: Anything further from counsel?

4 MR. SEMPA: No, Your Honor.

5 THE COURT: Very well. We're adjourned. Thank you.

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REPORTER'S CERTIFICATE

I, Laura Boyanowski, RMR, CRR, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

Laura Boyanowski, RMR, CRR
Official Court Reporter

REPORTED BY:

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